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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,466	03/19/2004	Matthew R. Cook	10773/66	7212

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EXAMINER

BUECHNER, PATRICK M

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/804,466

Applicant(s)

COOK ET AL.

Examiner

Patrick M. Buechner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/12/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 21, 23, 24, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Schisler (US 5,806,981).

Schisler discloses the elements of claim 21 as a bag for containing items, the bag having a body (1) with two opposing side panels (1a, 1b), unlabeled front and rear panels, and an unlabeled cavity formed by at least the two side panels and the rear panel and fully accessible from outside the body without disassembly.

Schisler discloses the elements of claim 23 as a support (3) extending between the two sidewalls.

Schisler discloses the elements of claim 24 as the support (3) is “capable” of supporting a bag above a portion of the cavity.

Schisler discloses the elements of claim 27 as a support for beverage cups (Figures 2-4).

Schisler discloses the elements of claim 28 as a bottom panel (1c) extending between the sidewalls and rear wall.

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3. Claims 29-31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoonover et al. (US 4,781,314).

Schoonover discloses a container having two sidewalls (14), a top wall (34), a rear wall (22) and a front wall (44). Schoonover also discloses the top wall having a recessed surface (34, recessed below surface of top of handle 36) with a filling opening (38) that does not extend past the top surface of the handle. Schoonover also discloses a cavity (interior of container) formed by the sidewalls and rear wall and accessible through the front panel (through first aperture 48) without disassembling the container. Schoonover also discloses a spout dispensing assembly (46) positionable within the first aperture. Schoonover also discloses the cavity extending below the first aperture

4. Claims 29-31, 33 and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Lloyd (US 6,439,757).

Lloyd discloses a container having a body comprising a rear wall (24) a front wall (28) first sidewall (22), second sidewall (38) and a top panel (best seen Figure 2) that has a recessed portion for receiving a filling assembly (46) that does not extend past a plane of the upper most top surface of the top panel (folded edges of top panel in Figure 2). Lloyd also discloses cavity (16) formed by two sidewalls and the rear wall and accessible from the front wall (Figures 1 and 2). Lloyd discloses an aperture (40) to receive a dispensing spout (42). The cavity of Lloyd is disclosed as large enough for a bottle (18) and is therefore certainly large enough to accommodate a portion of a cup.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schisler in view of Andersen et al. (US 5,830,548).

Schisler discloses the elements of claims 22, 25 and 26, as discussed above in 2, with the exception of the sidewalls having either double panel thickness or corrugation.

Andersen teaches double panel thickness and corrugation for packaging materials (column 16, lines 24-61, column 61, lines 25-54, column 72, lines 54-59, and column 73, lines 1-26).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the sidewalls and body of Schisler with double panel thickness and corrugation as taught by Andersen in order to reduce weight and increase stiffness of the bag (Andersen column 61, lines 39-48).

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schoonover in view of Nishigami et al. (US 5,746,350).

Schoonover discloses all the limitations of claim 32, as discussed above in 3, with the exception of the dispensing assembly being a pump.

Nishigami teaches using a pump to dispense product from a container.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the pump of Nishigami as the dispensing assembly for Schoonover in order to dispense a metered dose.

8. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd in view of Nishigami et al. (US 5,746,350).

Lloyd discloses all the limitations of claim 32, as discussed above in 4, with the exception of the dispensing assembly being a pump.

Nishigami teaches using a pump to dispense product from a container.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the pump of Nishigami as the dispensing assembly for Schoonover in order to dispense a metered dose.

9. Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd in view of Andersen.

Lloyd discloses the elements of claims 35 and 36, as discussed above in 4, with the exception of the sidewalls having either double panel thickness or corrugation.

Andersen teaches double panel thickness and corrugation for packaging materials (column 16, lines 24-61, column 61, lines 25-54, column 72, lines 54-59, and column 73, lines 1-26).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the sidewalls and body of Lloyd with double panel thickness and corrugation as taught by Andersen in order to reduce weight and increase stiffness of the bag (Andersen column 61, lines 39-48).

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 21-26 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5-9 of U.S. Patent No. 6,736,289 in view of Weaver (US 4,673,125). Claims 1 and 5-9 of U.S. Patent No. 6,736,289 disclose a substance container with sidewalls having double thickness or corrugation, the sidewalls forming a cavity accessible from outside the body and a support to buttress a bag. Claims 1 and 5-9 of U.S. Patent No. 6,736,289 do not disclose the sidewalls as two opposing sidewalls with front and rear sidewalls.

Weaver teaches a container having two opposing sidewalls, front and rear sidewalls. It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide this structure to the device of claims 1 and 5-9 of U.S. Patent No. 6,736,289 since it forms a standard in the art rectangular or square shape and claims 1 and 5-9 of U.S. Patent No. 6,736,289 are silent as to the exact structure formed by the sidewalls, requiring one of ordinary skill in the art to look to the prior art for suitable structures.

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12. Claim 27 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6736289 in view of Weaver and further in view of Schisler. Claim 1 of U.S. Patent No. 6736289 in view of Weaver discloses the limitations of claim 27, as discussed above in 6, with the exception for the cavity being used to store beverage cups.

Schisler teaches a package having a cavity used to store beverage cups, as discussed above in 2. It would have been obvious for one of ordinary skill in the art at the time the invention was made to configure the cavity of Claim 1 of U.S. Patent No. 6736289 in view of Weaver to hold beverage cups in order to store beverage cups separate from foodstuffs (Schisler, column 3, lines 36-44).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Della Riva (US 5,228,589), Ichikawa et al. (US 5,454,483) and Bunschoten (GB 2228725).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (571) 272-4923. The examiner can normally be reached on 6:30am-5:00pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*PB*

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